



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PCL Construction Services, Inc.

File: B-236182.3

Date: October 16, 1989

DIGEST

Bidder that informs the contracting activity of its intention to file a bid protest in the General Accounting Office does not qualify the extension of its bid acceptance period and render itself ineligible for award.

DECISION

PCL Construction Services, Inc., protests any award to Sheehy Construction Company under invitation for bids (IFB) No. 8212-AE/8813-AE, issued by the Veterans Administration (VA) Medical Center in Minneapolis, Minnesota, for two construction and remodeling projects. The protester contends that Sheehy's bid should not be considered for award as its bid expired because it improperly conditioned a requested bid extension.

We deny the protest.

The solicitation established June 13, 1989, as the date for bid opening and provided for a minimum bid acceptance period of 30 days, or through July 13. The VA received three bids. Several hours after bid opening, the apparent low bidder informed the contracting officer that a mistake in bid had been made and requested withdrawal of its bid. Due to the mistake in bid claim, the contracting officer determined that the evaluation process would not be completed within the original bid acceptance period and on June 21 he requested the two remaining bidders to extend their bid acceptance periods until August 14.

It appears that both of these bidders had concerns about the cost impact of any delay in award beyond July 13 and extended their bids only at the last minute. Originally, PCL (the third low bidder) submitted a conditional extension of its bid; however, two days before its original bid expired, it cured this defect by submitting an unconditional

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bid extension. Sheehy, the second low bidder, waited until July 12 to extend its bid, but included with the extension advice that it intended to file "a separate protest of the bid evaluation process for this project." The letter went on to state that "the protest in no way qualifies Sheehy Construction's extension of the period for acceptance," and that the extension is "without qualification." (emphasis in original).

On July 13, Sheehy filed a bid protest with our Office alleging that the contracting officer abused his discretion in requesting a bid extension in that he^{1/} should have been able to resolve the low bidder's request for withdrawal within the original 30-day bid acceptance period and that he failed to consider the extent to which the delay in award would result in increased costs to the contractor. As relief, Sheehy requested that it be awarded the contract on the day it filed its protest or, in the alternative--should it be awarded the contract at a later date--that contract performance be measured from July 13 "and that Sheehy be allowed to make a request for equitable adjustment for the costs Sheehy may incur due to the extension." In addition, Sheehy requested its bid protest costs. In its protest Sheehy further stated:

"Please take note that Sheehy has [submitted an unqualified extension of its bid acceptance period to August 14]. This protest in no way qualifies the extension of Sheehy's offer. This protest is separate and distinct from Sheehy's extended offer and [the General Accounting Office] should consider it separately."

In addition, Sheehy stated that it "withdrew" its protest if consideration of its protest meant that the procurement would be resolicited or that contract award would be stayed. Since Sheehy knew of the allegedly improper request for bid extension more than 10 working days prior to when its protest was filed in our Office, the protest was untimely and we dismissed it as such on July 19. (Sheehy subsequently requested that we reconsider our July 19 dismissal, but then withdrew its request.)

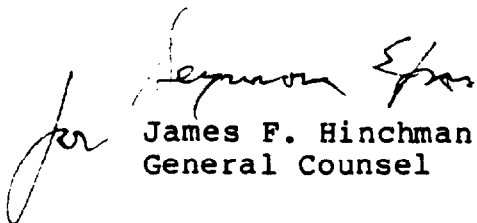
^{1/} It does not appear that the contracting officer had authority to make this determination. According to the contracting officer's statement, the decision whether to permit withdrawal of the low bid was made by the VA's Deputy Assistant Secretary for Acquisition and Material Management, who on July 11, approved the requested withdrawal.

PCL, upon being provided by the VA with a copy of Sheehy's protest, then filed this protest, contending that Sheehy's bid should not be considered for award on the grounds that Sheehy's protest amounted to a material condition attached to its bid extension, and as such rendered the bid nonresponsive. PCL contends that Sheehy's extension of its bid acceptance period was qualified since in Sheehy's protest it requested an equitable adjustment for any delay. PCL argues that it is immaterial whether Sheehy made this request in its bid extension addressed to the contracting activity or in its protest at our Office, because the effect is identical. We disagree.

We note at the outset that two days before the expiration of the original 30-day bid acceptance period the VA did permit the low bidder to withdraw and presumably the agency would have been in a position to award this contract shortly thereafter but for the protests filed by each of the two remaining competitors. As for the merits, we have held that an extension to a bid acceptance period is qualified when the bidder conditions its extension on a change in a material term of its bid. See Kos Kam, Inc., B-221806, May 14, 1986, 86-1 CPD ¶ 460, request for recon. denied, June 11, 1986, 86-1 CPD ¶ 543. When a bidder does qualify the extension of its bid acceptance period, it renders itself ineligible for award after the original bid expires. Id.

Here, Sheehy submitted to the VA an unconditional extension of its bid acceptance period. The fact that Sheehy also informed the agency that it intended to exercise its statutory right to file a protest with our Office does not alter the status of that extension. Sheehy did not condition its extension on our sustaining its protest, but rather, extended its bid unconditionally regardless of the outcome of any protest.

Since Sheehy did not improperly condition the extension of its bid acceptance period, the protest is denied.


James F. Hinchman
General Counsel